

STATE OF RHODE ISLAND  
PROVIDENCE, SC

SUPERIOR COURT

GERALD PARRILLO

VS.

CA NO.P09- 3233

OPTION ONE MORTGAGE  
CORPORATION, SAND CANYON  
CORPORATION, AMERICAN HOME  
MORTGAGE SERVICING  
CORPORATION, DEUTSCHE BANK  
NATIONAL TRUST COMPANY, AS TRUSTEE  
FOR THE CERTIFICATE HOLDERS OF  
SOUNDVIEW HOME LOAN TRUST,  
2006-OPT3, ASSET BACKED CERTIFICATES,  
SERIES OPT3

VERIFIED COMPLAINT FOR DECLARATORY  
RELIEF AND TO REMOVE DEUTSCHE BANK  
FROM TITLE DUE TO LACK OF VALID ASSIGNMENT OF  
MORTGAGE AND NOTE AND TO STAY ANY ACTIONS  
BY ANY ALLEGED OWNER OF PROPERTY BY FORECLOSURE

PARTIES:

1. Gerald Parrillo was the owner of the property located at 12 Hargraves Street, Johnston, Rhode Island, County of Providence, State of Rhode Island.
2. Option One Mortgage Company is a defunct mortgage lender (“Option One”), formerly located in Irvine, California. Upon information and belief, it is known as Sand Canyon Corporation.
3. Option One was a large subprime lender until it closed in April of 2008.
4. Deutsche Bank National Trust Company is located in Los Angeles, California.

**FACTS:**

5. On 12/23/05, Parrillo entered into a loan agreement with Option One. He executed a note and promissory note. On both documents Option One was identified as the Lender.
6. At paragraph 22 of the Mortgage, entitled "Acceleration; Remedies." It states that "Lender shall [emphasis added] give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the STATUTORY POWER OF SALE and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the STATUTORY POWER OF SALE, Lender shall mail a copy of a notice of sale to Borrower as provided in Section 15. Lender shall publish the notice of sale, and the Property shall be sold in the manner prescribed by Applicable Law. Lender or its designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it." [emphasis added]

7. The Lender in this case was the only party, pursuant to the plain language of the mortgage, which was prepared by and used by the Defendant or Defendants, and in the event of any inconsistencies in said document, said inconsistencies and the results thereof are the fault of the Defendant or Defendants and the negative results thereof shall be construed against the Defendant or Defendants.
8. In this case, the Lender never complied with any of the provisions of paragraph 22 of the Mortgage and as a necessary result thereof, any alleged foreclosure on the subject property was flawed.

9. The fact that paragraph 22 of the mortgage was not complied with renders any foreclosure null and void.
10. During the term of his mortgage, Parrillo fell behind on his payments due to the fact that he could not afford the mortgage.
11. On August 8, 2008, an alleged assignment was made by American Home Mortgage Servicing, Inc., (“AHMSI”), as successor in interest to Option One, to Deutsche Bank.
12. AHMSI is not the successor in interest to Option One Mortgage, therefore, the assignment was of no legal effect and is void.
13. Deutsche Bank has no right/standing to invoke the statutory power of sale since it was not the Lender in this transaction as set forth in the note and mortgage.
14. Deutsche Bank has no right/standing to invoke the statutory power of sale since the alleged assignment was executed by one other than the holder of the note and mortgage.
15. At paragraph 22 of the Mortgage, entitled “Acceleration; Remedies.” It states that “Lender shall [emphasis added] give notice to Borrower prior to acceleration following Borrower’s breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the STATUTORY POWER OF SALE and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys’ fees and costs of title evidence.

If Lender invokes the STATUTORY POWER OF SALE, Lender shall mail a copy of a notice of sale to Borrower as provided in Section 15. Lender shall publish the notice of sale, and the Property shall be sold in the manner prescribed by Applicable Law. Lender or its designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable

*attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it."* [emphasis added]

16. The Lender in this case was the only party, pursuant to the plain language of the mortgage, which was prepared by and used by the Defendant or Defendants, and in the event of any inconsistencies in said document, said inconsistencies and the results thereof are the fault of the Defendant or Defendants and the negative results thereof shall be construed against the Defendant or Defendants.
17. In this case, the Lender never complied with any of the provisions of paragraph 22 of the Mortgage and as a necessary result thereof, any alleged foreclosure on the subject property was flawed.
18. The fact that paragraph 22 of the mortgage was not complied with renders any foreclosure null and void.
19. Deutsche was not the Lender as referred to in paragraph 22 of the instant mortgage referred to in paragraph 11.
20. The Notice of Intention to Foreclose was defective and of no legal significance due to the non-compliance with paragraph 22 of the mortgage.

**JURISDICTION**

21. The amount in controversy; to wit, \$300,025.00 , is sufficient to invoke the jurisdiction of this Court.
22. This Court has subject matter jurisdiction over the matters in this complaint pursuant to the following statutes:
  - a. The provisions of R.I.G.L. §8-2-14 and R.I.G.L. §8-2-13, grant the Superior Court jurisdiction over questions of law and equity. The Plaintiff is asking this Court, inter alia, to restrain the certain defendants from foreclosing on the subject property.
  - b. The provisions of the Declaratory Judgment Act, R.I.G.L. 9-30-1 et seq., grant the Court jurisdiction to determine certain legal questions relating to the property rights of the Plaintiff and the Defendants under certain contracts, assignments, powers of attorneys, and deed. Plaintiff asks that the foreclosure deed, the alleged assignments, and power of attorney, or lack thereof, and mortgage deed be declared invalid.
  - c. The provisions of R.I.G.L. §34-16-1 et, seq, in particular, R.I.G.L. §34-16-4 and R.I.G.L. §34-13.1-10, Marketable Title, authorizes the Court to determine questions of title and property interests being disputed by the parties. Plaintiff contends that she holds the title to the property in fee

simple, and that the mortgage and foreclosure deed and subsequent recordings have slandered her title; and is void documents.

- d. The Defendants are liable to Parrillo for slander of title for their wrongful filing on the land records in Providence, RI.

**COUNT I**  
**Quieting Title/Declaratory Judgment**

- 23. Averments one (1) through (23) are hereby incorporated herein by reference.
- 24. The foreclosure deed of the Defendant, Deutsche is void because it did not take by way of a valid assignment from the original note holder or its successor in interest.
- 25. The foreclosure deed of the Defendant, Deutsche, is void because it was not the holder of the note at the time of the commencement of the foreclosure.
- 26. Deutsche had no interest in the property, the mortgage or note and, thus, had no standing to foreclose upon the note and mortgage of the Plaintiff.
- 27. Deutsche has abused the use of the foreclosure process knowing that it did not have a valid assignment of the note and mortgage, and as a result the Plaintiff has suffered compensable damages.
- 28. Deutsche by its improper recordings on the land records in the City of Providence, Rhode Island has slandered the title of the Plaintiff and caused him compensable damages.
- 29. Plaintiff is being irreparably harmed by the actions of all of the Defendants.
- 30. Plaintiff has no other remedy at law but to seek the relief requested herein.
- 31. The Equities of the matter favor the Plaintiff.
- 32. Public policy matters favor the Plaintiff.

**WHEREFORE**, the Plaintiff prays that this Court enter judgment against all of the Defendants, and further, (1) determine that all assignments on record are void for the reasons set forth herein and, (2) Order that Deutsche has no interest in the subject property and (3) Temporarily, preliminarily and permanently restrain Deutsche from commencing any further foreclosure actions or eviction actions against the Plaintiff

pending a trial on the merits of the Plaintiff's complaint, and (4) award the Plaintiff compensatory damages against all of the Defendants for their wrongful slander of title and abuse of process in a sum to be determined by a trier of fact, and (5) award attorney's fees and costs, and, (6) award such other relief as this Court deems just and proper.

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**SEE "EXHIBIT A" APPENDED HERETO**

Executed this 2<sup>nd</sup> day of June 2009.

**GERALD A. PARRILLO,  
By his attorney,**

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George E. Babcock, Esquire  
23 Acorn Street  
Providence, RI 02903  
Bar Id# 3747  
274-1902